

Before the
Administrative Hearing Commission
State of Missouri



LORA BETH JOHNSON,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1745 PH
)	
MISSOURI BOARD OF PHARMACY,)	
)	
Respondent.)	

DECISION

We dismiss Lora Beth Johnson’s complaint for lack of jurisdiction.

Procedure

On October 3, 2013, Johnson filed her complaint. The Missouri Board of Pharmacy (“the Board”) filed a motion to dismiss on October 18, 2013. We notified Johnson on October 21, 2013, that she had until November 4, 2013, to respond to the Board’s motion. Johnson filed nothing.

We treat the Board’s motion as a motion for summary decision because the Board relies on evidence outside of the pleadings.¹ In order to prevail on a motion for summary decision, the

¹ 1 CSR 15-3.436(4)(A). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Board must set out undisputed facts that entitle the Board to a favorable decision.² Parties may establish facts by admissible evidence.³

Attached in support of the Board's motion are unauthenticated copies of postal records and a letter from the Board to Johnson. In the absence of an objection, we must consider any evidence having probative value.⁴ Such is the case with these documents, which appear to be copies of records maintained by the Board in its ordinary course of business. Because Johnson did not object to them, we consider these documents as evidence of the Board's decision, the date the Board mailed its decision to Johnson via certified mail, and that the Board notified Johnson she must appeal within thirty days of the date the letter was mailed.

We make the following findings of fact based on the pleadings and the documents accompanying the Board's motion.

Findings of Fact

1. Johnson filed an application for registration as a pharmacy technician on August 13, 2013.
2. The Board denied Johnson's application and placed Johnson on the Missouri Employment Disqualification List for five years.
3. The Board notified Johnson of its actions by a letter sent certified mail on August 30, 2013.
4. The Board's decision letter advised Johnson that she must file a complaint with this Commission "within thirty days after the delivery or mailing by certified mail."

² 1 CSR 15-3.446(6)(A).

³ 1 CSR 15-3.446(6)(B).

⁴ § 536.070(8). Statutory references are to the 2000 edition of the Revised Statutes of Missouri, unless otherwise noted.

5. Johnson filed her complaint with this Commission on October 3, 2013, more than thirty days after August 30, 2013.

Conclusions of Law

Relying on § 621.120, the Board argues that Johnson's complaint is untimely. The statute provides, in pertinent part:

Upon ... refusal of such agency to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination, such applicant may file, within thirty days after the delivery or mailing by certified mail of written notice of such refusal to the applicant, a complaint with the administrative hearing commission.

Consistent with § 621.120, the Board's decision letter advised Johnson that any complaint must be filed with this Commission within thirty days of the "date of mailing or delivery" of the Board's decision, whichever is earlier. In this instance, it was the mailing date of the Board's decision that was the earlier date; therefore, Johnson had thirty days from August 30, 2013 to file her complaint. Thirty days from that date was September 29, 2013. Because September 29 was a Sunday, the last day to file the complaint was the next business day, September 30, 2013.⁵ Johnson filed her complaint on October 3, 2013, three days out of time.

The untimely filing of Johnson's complaint deprives us of jurisdiction to hear it.⁶ If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.⁷

⁵ § 1.040.

⁶ *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. 1988); *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1984).

⁷ *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).

Summary

Johnson's complaint was untimely filed. We dismiss it for lack of jurisdiction, and cancel the hearing.

SO ORDERED on November 18, 2013.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner